

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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4 In the Matters of)
5)
6 Federer for Congress Committee and) MURs 5112 and 5383
7 Thomas M. Busken, as treasurer; and)
8)
9 Paul A. Matteucci) MUR 5383
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SENSITIVE

12 **GENERAL COUNSEL'S REPORT #2**

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15 **I. ACTIONS RECOMMENDED:** (1) Take no further action against the Federer for
16 Congress Committee and Thomas M. Busken, as treasurer, and Paul A. Matteucci and close the
17 file in these matters; and (2) approve the appropriate letters to Respondents, including
18 admonishments.

19 **II. BACKGROUND AND PROCEDURAL HISTORY**¹

20 MUR 5112, a complaint-generated matter, concerns the Federer for Congress
21 Committee's ("the Committee's") failure to adequately disclose at least \$233,289 in
22 disbursements by using vague terms to describe their purposes such as "services rendered" and
23 "consulting." The Committee's inadequate reporting occurred in disclosure reports covering
24 most of the 2000 election cycle.

25 MUR 5383 was generated through a referral by the Department of Justice ("DOJ"). It
26 concerns an apparent prohibited corporate advance by AM & PM, Inc. a closely-held company
27 operated by the Committee's then-campaign manager, Paul A. Matteucci, to print candidate-

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, all citations herein to the Federal Election Campaign Act of 1971, as amended (the "Act") are as it read prior to the effective date of BCRA, and all citations herein to the Commission's regulations are to the 2000 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 authored books to be used in the Committee's fundraising efforts in the 2000 election cycle.² In
2 pertinent part, the referral consisted of a Federal Bureau of Investigation ("FBI") memorandum
3 summarizing interviews conducted by an FBI agent with the candidate, William Federer, and Mr.
4 Matteucci. In those interviews, both men stated that AM & PM had advanced the funds to print
5 the books for the Committee's use because the Committee had insufficient funds to pay for a
6 separate printing. Both said the Committee had eventually reimbursed the advance. The FBI
7 memorandum noted that these statements were supported by copies of documents Mr. Matteucci
8 provided, consisting of a purchase order and an invoice reflecting a "book advance" totaling
9 \$11,491. The referral also noted that the Committee's disclosure reports reflected a
10 disbursement to AM & PM for the total amount of the invoice that included the \$11,491 book
11 advance.

12 When the Commission made its reason-to-believe findings in these two matters on
13 August 27, 2003, it simultaneously approved pre-probable cause conciliation agreements
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² The Commission found no reason to believe that violations occurred with respect to other activity described in the referral, including alleged failures to report contributions and certain disbursements and the personal use of a campaign van.

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After early attempts at conciliation with the Committee were unsuccessful, we embarked on a two-pronged approach to move this case forward. First, we conducted an informal investigation to obtain information sufficient to either refute or establish probable cause on the Section 441b violation in the event we decided to proceed to briefs. These efforts focused primarily on obtaining documents and other evidence confirming that the book advance had taken place in the amount referred,⁶ establishing the date it occurred, and ascertaining the circumstances surrounding it, including whether it could be viewed as an

⁶ The DOJ referral referenced the date of an AM & PM invoice to the Committee that included a charge for a book advance, but it contained no information about the dates of AM & PM's book order or payment. Moreover, DOJ did not attach copies of the documents it referenced in the referral. These documents were later obtained from DOJ

1 extension of credit by Mr. Matteucci's company. AM & PM. Second, as we obtained more
2 information, we continued attempts to conciliate.

3 During the investigation, this Office obtained documents from the company that printed
4 the books, Dickinson Press; obtained more detailed accounts of the FBI's interviews
5 with Messrs. Federer and Matteucci; interviewed the now-retired FBI agent who
6 conducted the interviews; and interviewed Dickinson Press employees about the company-
7 produced documents. Information obtained from these sources established that AM & PM
8 advanced funds to purchase the books on July 25, 1999 in a somewhat higher amount than stated
9 in the referral (\$12,180 instead of \$11,491). These sources provided minimal information,
10 however, to help us assess whether the transaction truly constituted an advance, or whether it
11 could be viewed as an extension of credit made outside, or in, the ordinary course of business.
12 Therefore, we made further attempts to learn more about AM & PM through research into
13 publicly available sources and through contacts with other agencies.⁷ Most importantly, after
14 much effort, we interviewed Mr. Matteucci at the Commission's offices on February 23, 2004.⁸

15 Mr. Matteucci's interview provided us with some information about AM & PM, but the
16 information he provided about the book transaction raised additional questions, including how
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⁷ We obtained AM & PM's Articles of Incorporation from the Missouri Secretary of State's Office and sought information from the St. Louis County Prosecutor's Office, which investigated the use of Mr. Federer's book in his 2000 campaign. We also spoke to the Missouri Ethics Commission because Mr. Matteucci had been quoted in the press as stating that that agency had AM & PM's business records. The Ethics Commission had issued a decision in July 2003 finding that a local political organization run by Mr. Matteucci had violated state law when it failed to timely file campaign disclosure reports and inadequately described disbursements made by that organization to vendors, including AM & PM. Neither the Prosecutor's Office nor the Ethics Commission had relevant information to share.

⁸ In a phone call with a staff attorney after he received the Commission's notification letter in September 2003, Mr. Matteucci said that he disagreed with the Factual and Legal Analysis. However, he failed to file a response and then ignored a follow-up letter and several voice-mail messages left for him between October 2003 and February 9, 2004. We finally reached him on February 19, 2004.

1 much money AM & PM had advanced to purchase the books.⁹ Moreover, some of the
2 information he provided was inconsistent with information we had obtained from others, raising
3 concerns for us about the reliability of the information he gave us.¹⁰ To address our concerns
4 and clarify the apparent inconsistencies, we requested that Mr. Matteucci provide additional
5 documents, which he readily agreed to do. Mr. Matteucci also signed a statute of limitations
6 tolling agreement at the conclusion of the meeting so that we could continue to discuss
7 conciliation as we reviewed the information he agreed to provide. We sent him a letter on
8 February 24, 2004 describing the documents he had agreed to produce.

9 Mr. Matteucci failed to provide the promised documents or return follow-up phone calls.
10 At this point, we evaluated the information in hand and prepared General Counsel's Briefs which
11 principally relied on the documents Dickinson Press had produced and the more detailed
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⁹ For example, Mr. Matteucci told us that he had not billed the Committee for the books and had not been paid for them until he delivered them to the Committee's office sometime in November 1999, after haggling with Mr. Federer's brothers about payment. This seemed to contradict the August 31, 1999 AM & PM invoice to the Committee that Mr. Matteucci had given to the FBI, which included a charge for a book advance that the Committee had apparently paid on September 20, 1999. Mr. Matteucci also brought with him to the interview a different version of the invoice he had given the FBI that matched a copy of the \$12,180 check he produced to us. He could not explain the difference between the amount of that check and the \$11,491 he had invoiced the Committee. In attempting to explain these discrepancies, Mr. Matteucci posited that he may have loaned money to Mr. Federer. This statement raised concerns about whether AM & PM had loaned the candidate money to purchase even more books because Mr. Matteucci had stated earlier in the interview that Mr. Federer's income during the campaign was from book sales and that he had discussed with Mr. Federer the need for Mr. Federer to have an income during the campaign because he didn't want "a broke candidate."

¹⁰ For example, Mr. Matteucci said he "was involved" in negotiating AM & PM's book purchase with Dickinson Press, claiming that he exchanged several e-mails with a Dickinson Press employee. However, the current and former Dickinson Press employees involved in the book purchase could not recall ever communicating with Mr. Matteucci and did not recognize his name. The employee most closely involved in the purchase said he dealt directly with Mr. Federer. Moreover, Dickinson Press documents reflect communication only with Mr. Federer.

1 accounts of the FBI interviews.¹¹ The Briefs, dated May 4, 2004, indicated that the General
2 Counsel was prepared to recommend that the Committee violated 2 U.S.C. §§ 441b and 434(b)
3 and that Mr. Matteucci violated 2 U.S.C. § 441b. The Briefs were delivered to Respondents on
4 May 6, 2004.

5 Following receipt of the General Counsel's Briefs, Respondent Matteucci, who was
6 previously unrepresented, obtained counsel. The Committee retained new counsel. Both
7 Respondents requested and received extensions of time to respond to the briefs in exchange for
8 tolling agreements.

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14 on June 17, 2004,
15 counsel for the Committee filed a response to the General Counsel's Brief, the first substantive
16 response by the Committee to the Section 441b violation involving the book advance. The reply
17 brief raised facts previously unknown to us concerning other alleged payments by AM & PM to

¹¹ Prior to finalizing the Briefs, we once again attempted to settle with Respondents to no avail. By this time, we had consulted with DOJ and were able to share with the Committee's counsel the fact that Mr. Federer's interview with the FBI formed the basis of the Commission's reason to believe finding concerning the book advance. After an initial discussion, Committee counsel did not return several follow-up phone calls. Mr. Matteucci advised us at this point that he had retained counsel, but that counsel informed us that he had not yet been formally retained.

1 other vendors for goods and services totaling about \$26,000.¹³ The Committee argued that all of
2 AM & PM's payments, including the book advance, were permissible extensions of credit that
3 Mr. Matteucci had represented to Mr. Federer as his routine way of doing business. *See*
4 Committee reply brief at 1-4.

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10 We believe that the available information in these matters indicates that AM & PM's
11 payment to print books to be used by the Committee is most analogous to a staff advance that
12 constituted a prohibited contribution because it was made through a corporation. For the reasons
13 discussed below, however, we recommend that the Commission take no further action against
14 Respondents in these matters except to issue admonishment letters, and close the files.

15 **III. RECOMMENDED DISPOSITION**

16 **A. The Section 441b Violation Relating to the Book Advance**

17 The central issue in MUR 5383 is whether AM & PM's payment to purchase books to be
18 used by the Committee was a corporate advance or an extension of credit. An advance consists

¹³ Based on our February interview with Mr. Matteucci, we believed the Committee's other reported disbursements to AM & PM were in connection with direct services AM & PM provided in helping Mr. Federer garner support for his candidacy such as salary payments and office expenses.

1 of a discrete instance or instances in which someone purchases goods or services for a political
2 committee with the expectation that he or she will be reimbursed. An advance ordinarily
3 constitutes a contribution. *See* 11 C.F.R. § 100.7(a)(1) (2000). In an extension of credit, goods
4 and services are provided directly by a vendor or other person without the expectation that a
5 political committee will make an upfront payment or pay immediately upon performance. An
6 extension of credit is a contribution unless it is made in the ordinary course of business and on
7 terms that are substantially similar to extensions of credit to nonpolitical debtors that are of
8 similar risk and size of obligation. *See* 11 C.F.R. § 100.7(a)(4) (2000).¹⁵

9 AM & PM's payment to print books to be used by the Committee is most properly
10 viewed as a corporate advance. Acting through AM & PM, Mr. Matteucci purchased the books
11 on July 25, 1999 from a third party vendor, Dickinson Press, for the Committee to use as a gift
12 for contributors and potential contributors.¹⁶ Mr. Matteucci purchased the Committee's books
13 with the expectation that he would be reimbursed. Records show that the Committee indeed
14 reimbursed AM & PM for the advance on September 20, 1999. Because Mr. Matteucci made the
15 advance through AM & PM, a corporation, it constituted a prohibited corporate contribution to
16 which Mr. Matteucci consented. *See* 2 U.S.C. § 441b.

17 In its reply to the General Counsel's Brief, the Committee disputes that AM & PM's
18 book payment was a prohibited corporate advance. It maintains that AM & PM's payment

¹⁵ 11 C.F.R. § 100.7(a)(4) concerns extensions of credit by any person. Part 116 of the regulations, cited by the Committee, specifically addresses extensions of credit by commercial vendors. *See* 11 C.F.R. § 116.3 (2000). As discussed below, we believe that the book advance does not constitute an extension of credit by any person, including a commercial vendor.

¹⁶ Dickinson Press printed copies of the book in the past, and Mr. Federer's closely-held company, Amerisearch, Inc., sold copies to provide income for Mr. Federer. The books paid for by AM & PM were part of a larger book order Mr. Federer placed with Dickinson Press to obtain books for both the campaign and for himself. AM & PM paid for the books that went to the campaign; Amerisearch paid for the books used personally by Mr. Federer.

1 constituted an extension of credit by a commercial vendor in the ordinary course of business.

2 See 11 C.F.R. § 116.3. The Committee bases its argument on an affidavit signed by Mr. Federer
3 in which he says that Mr. Matteucci *told* him he would take care of everything that needed to be
4 done to manage the campaign and would then bill the campaign for whatever goods and services
5 he provided directly or purchased from other vendors. See Committee reply brief at 1-3

6 According to Mr. Federer, AM & PM's payment for books was no different than a variety of
7 other items AM & PM assertedly obtained by negotiating and contracting with other vendors,
8 including yard signs, stationery, staff, phone service, cell phones and office phones, office
9 supplies and use of a copier and computers. *Id.* and Federer affidavit, paragraphs 5 and 6. As
10 support for the Committee's position, it points to the fact that most of its disbursements during
11 the period in which Mr. Matteucci managed the campaign (approximately June 9-September 9,
12 1999) were made to AM & PM. *Id.* at 2-3.

13 Whatever surface appeal there might be to the idea that Mr. Matteucci extended credit for
14 his services and that his services included expenses, the fact remains that the book purchase was
15 an advance, rather than an extension of credit in the ordinary course of AM & PM's business.

16 First, it was structured as an advance; AM & PM bought the books for the Committee and was

17 ~~reimbursed later. Second, the AM & PM invoice encompassing the transaction described it as a~~

18 "book advance." Third, and perhaps most importantly, Mr. Matteucci's statements indicated that

19 AM & PM was not a "commercial vendor" of campaign management services, as the term is

20 defined at 11 C.F.R. § 116.1(c),¹⁷ and he was unable to confirm that AM & PM even had an

¹⁷ A "commercial vendor" means any person providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 11 C.F.R. § 116.1(c).

1 ordinary course of business regarding campaign management or fundraising services. much less
2 that making strings of advances to campaigns was part of its ordinary course of business.

3 According to Mr. Matteucci, AM & PM's work during this period was "mainly computer
4 consulting" including systems installation and programming. He is politically active in state and
5 local politics and has performed some political work through AM & PM. But based on his
6 description, news accounts and state disclosure reports, most of the political work provided
7 through AM & PM consisted of printing services for state and local campaigns using company-
8 owned printing presses.¹⁸ None of the information provided by Mr. Matteucci and no publicly
9 available source indicates that Mr. Matteucci made his living as a political consultant or
10 campaign manager. In fact, in his most recent interview, Mr. Matteucci stated that he views his
11 political work as volunteer work and he specifically characterized his work for the Committee
12 that way, stating that he neither made nor lost money working for the Federer Committee. Thus,
13 as described by Mr. Matteucci himself, AM & PM was not a "commercial vendor" as that term is
14 defined in the Commission's regulations because its usual and normal business was to provide
15 computer services, not campaign management services. *See* 11 C.F.R. 116.1(c) (2000).

16 AM & PM's book advance was not provided "in the ordinary course of business" either.
17 Mr. Matteucci could cite to only one example besides AM & PM's payment for the books where
18 h purchased items from others in performing political work: he sometimes paid Intaglio

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¹⁸ During the relevant period, Mr. Matteucci also operated another closely-held corporation, Topline Corporation, which he described as "focused on [his] family agricultural business." Mr. Matteucci also provided political services through Topline which appear to have consisted largely of operating grass-roots phone banks. During this period, 1998-99, Mr. Matteucci was "transitioning" from working through both companies to working primarily through AM & PM. The available documentation and the Committee's disclosure reports show that AM & PM was the company involved in the book purchase.

1 Creative Services, a printing company owned by a friend, to print more professional-looking
2 campaign materials than AM & PM's printing presses could produce. Moreover, he followed no
3 established practices or procedures in advancing funds. Instead, his decision to advance funds
4 through AM & PM depended on his "comfort level" with a candidate or campaign, whether he
5 expected to be paid, and convenience. For example, the more closely involved Mr. Matteucci
6 was in a campaign, the more likely he would advance funds. If he was traveling, he would
7 sometimes advance funds rather than wait for a campaign to cut a check.

8 In addition, there was apparently no written contract between the Committee and either
9 AM & PM or Mr. Matteucci that can confirm Mr. Federer's account of the arrangement he made
10 with Mr. Matteucci.¹⁹ Finally, although the Committee's disclosure reports confirm that a
11 majority of its disbursements during Mr. Matteucci's three-month tenure were to AM & PM, this
12 fact is not as probative as it would be at another time.²⁰ During his estimated tenure, June 9-
13 September 9, 1999, long before the election, one would expect that few disbursements would be
14 made at all.

15 Despite our conclusion that AM & PM's payment for books violated 2 U.S.C. § 441b, the
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¹⁹ It bears noting that despite multiple opportunities to do so, the Committee has never asserted until now that the book advance was an extension of credit in the ordinary course of AM & PM's business. In its response to the Commission's reason-to-believe findings, the Committee said that the Factual and Legal Analysis provided insufficient information for it to respond to the Section 441b book advance violation and stated only that Committee records show it had disbursed funds to AM & PM for marketing expenses that included the book purchase.

²⁰ The Committee asserts that 78% of its disbursements to outside vendors during the time period it says Mr. Matteucci served as campaign manager (about June 9-September 9, 1999) were to AM & PM. See Committee reply brief at 2-3. The Committee's 78% figure is somewhat distorted, however, because it includes all disbursements to Mr. Matteucci, most of which were made between September 13 and October 14, 1999, and no disbursements made to other vendors in that additional period. If all disbursements made through October 14, 1999 are included, disbursements to AM & PM constituted 60% of the total disbursements.

1 information recently obtained from Mr. Matteucci, recent developments in another similar
2 matter, and a frank reassessment of the value of the case balanced against the costs of continuing
3 to pursue it, lead us to recommend that the Commission take no further action.

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6 We have pursued this as a case about a corporate advance and, as a legal matter, that is
7 precisely what it is. However, in practical terms, Mr. Matteucci was briefly either the campaign
8 manager of (according to the Committee), or a fundraising consultant to (according to Mr.
9 Matteucci), the campaign. As noted, as far as we can determine, he did not make his living as a
10 professional political, fundraising or campaign management consultant and AM & PM did not
11 engage in these activities as its usual business. This is not a case of advances by a full-service
12 consultancy, such as a large Washington-based media firm dealing with television and radio
13 stations. Rather, it is a case of an individual performing a traditional campaign staff role who,
14 for whatever reason, structured his formal relationship to the campaign as an independent
15 contractor rather than as paid staff or as a volunteer, and who used his closely held corporation as
16 the vehicle through which he performed his role. He also used that corporation to buy some
17 books for the Committee, expecting to be paid back -- much as paid or volunteer committee staff
18 sometimes make excessive contributions in the form of staff advances.

19 While legally this is a case about a corporate advance, in practical terms it is not very
20 distinguishable from cases concerning staff advances. In a recent MUR involving \$39,278 in
21 staff advances by a volunteer Finance Director, the Commission found reason to believe that he
22 made excessive in-kind contributions in the form of staff advances but took no further action
23 because, among other reasons, all but \$8,302 of the advances eventually had been reimbursed.

1 See First General Counsel's Report in MURs 5350, 5354 and 5361 (Schneider for Congress) at
2 13-15. Unlike the advance in this matter, the advances in the Schneider matters were also the
3 subject of a concurrent audit, and another reason this Office recommended not proceeding there
4 was that Audit did not refer the advances. Nevertheless, given the resolution of those MURs, it
5 strikes us as inequitable to continue to pursue Respondents in connection with the book advance
6 when all but \$689 of the advance was reimbursed within sixty days.

7 In addition to the equity issue, continued pursuit of this issue raises resource issues. The
8 advance at issue here was roughly \$12,000 and was reimbursed

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18 At the same time,
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1 however, we also want the Commission to be able to focus its limited resources on more
2 substantial and pressing matters.

3 Therefore, based on reasons of equity and resources, this Office recommends that the
4 Commission take no further action on the book advance violation and instead send an
5 admonishment letter to Respondents.

6 **B. The Other Outstanding Violations**

7 The General Counsel's Brief also argued that the Committee violated 2 U.S.C. § 441b by
8 accepting a \$1,525 prohibited contribution from Amerisearch in connection with the book
9 transaction, and 2 U.S.C. § 434(b) in connection with its inadequate reporting of disbursements
10 in reports filed during the 2000 election cycle.

11 The Amerisearch contribution arose from the fact that, as described *supra* at n. 15, the
12 Committee's books were ordered and printed together with orders for the same book that
13 Amerisearch planned to sell for profit. Amerisearch placed the orders for all of the books and
14 paid for the books Mr. Federer sold personally; AM & PM paid for the Committee's books. The
15 volume of the combined orders resulted in a price discount for the Committee's portion of the
16 books. Moreover, the final invoice reflects that Amerisearch paid for the Committee's portion of
17 related costs, such as shipping.

18 The Committee argues in its response that no contribution from Amerisearch results:
19 because any benefit that it derived as a result of the combined printing of the books for
20 Amerisearch and the Committee was offset, or even outweighed, by benefits received by
21 Amerisearch. *See* Committee reply brief at 4-6. The Committee cites to Advisory Opinion
22 2002-14 (Libertarians) as support for the proposition that no contribution results when a

1 Committee and another entity make a joint purchase and receive a price discount of equal value
2 that neither would receive separately.

3 Advisory Opinion ("AO") 2002-14 is inapposite to this matter. First, this case does not
4 involve the exchange or rental of mailing lists between a political committee and other entities.
5 the subject of that AO. Second, the principle underlying the Commission's conclusion in the AO.
6 that no contribution resulted from the exchange or rental of mailing lists is that the entities
7 involved in the transaction with a political committee presumably would receive a benefit of
8 equal value *from the political committee*. The available information, however, shows that the
9 only thing of value Amerisearch may have received from the Committee is copies of leftover
10 books that the Committee says it could not even use because the books had generated negative
11 controversy in the 2000 election. *See* Committee reply brief at 4-6. Moreover, the Committee
12 presumably transferred these books to Amerisearch long after their July 1999 purchase.
13 However, given that the amount of Amerisearch's contribution to the Committee as calculated in
14 the General Counsel's Brief is only \$1,525, and in light of the recommended disposition of the
15 other issues in this case, we do not believe pursuit of this issue is warranted.

16 Finally, with respect to the reporting violations, the Committee admits that it failed to
17 adequately describe the purposes of some of its disbursements. *See* Committee reply brief at 6.
18 In its defense, it asserts that its reports were amended.

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In light of

our recommended disposition as to the more substantive corporate advance issue, pursuing a probable cause conciliation agreement for reporting violations involving 1999-2000 activity may not be the most effective use of the Commission's resources. Instead, this Office recommends that the Commission take no further action against the Committee with respect to the 2 U.S.C. § 434(b) violations. We also recommend that the admonishment letter to the Committee concerning the Section 441b violation also include an admonishment concerning the reporting violations.

IV. RECOMMENDATIONS

1. Take no further action against the Federer for Congress Committee and Thomas M. Busken, as treasurer, in MURs 5383 and 5112 and send an admonishment letter.
2. Take no further action against Paul A. Matteucci in MUR 5383 and send an admonishment letter.
3. Close the files in MURs 5383 and 5112.
4. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Date

By:

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